

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION AT LAFAYETTE**

NANCY MICHELLE WILLIAMS,

Plaintiff,

v.

CAUSE NO.: 4:19-CV-81-TLS

KILOLO KIJAKAZI, Acting Commissioner
of the Social Security Administration,

Defendant.

OPINION AND ORDER

This matter is before the Court on a Motion for an Award of Attorney Fees Under 42 U.S.C. § 406(b) [ECF No. 25], filed on February 1, 2023. The Plaintiff's attorney requests attorney fees in the amount of \$19,137 pursuant to 42 U.S.C. § 406(b), with a net amount of \$9,637 paid to counsel. The Defendant takes no position on the requested award. *See* ECF No. 26. For the reasons stated below, the Motion is GRANTED.

BACKGROUND

The Plaintiff's attorney represented the Plaintiff before this Court in a judicial review of the Commissioner's unfavorable decision on the Plaintiff's application for disability insurance benefits and supplemental security income. On September 15, 2021, the Court reversed and remanded this case for further proceedings. ECF No. 21. The Court awarded \$9,500 in attorney fees under the Equal Access to Justice Act (EAJA), 28 U.S.C. § 2412. ECF No. 24.

On remand, the Social Security Administration issued a Notice of Award entitling the Plaintiff to past-due disability insurance benefits in the amount of \$76,548, twenty-five percent of which (\$19,137) was withheld for the payment of attorney fees. *See* Mot. Ex. E 2–4, ECF No. 25-5. The Plaintiff's attorney filed the instant motion [ECF No. 25] requesting that the Court

award attorney fees pursuant to § 406(b) in the net amount of \$9,637. This amount is based on the retainer agreement between the Plaintiff and his attorney [ECF No. 25-1], in which the Plaintiff agreed to pay his attorney twenty-five percent of all past-due benefits for work at the federal court level. The total request for an award under § 406(b) is \$19,137, which equals the twenty-five percent of past-due benefits withheld by the Social Security Administration. Counsel for the Plaintiff requests that the award of \$19,137 be offset by the total EAJA fees award of \$9,500, for a net payment to the attorney of \$9,637 in § 406(b) fees.

ANALYSIS

The Social Security Act allows for a reasonable fee to be awarded both for representation at the administrative level, *see* 42 U.S.C. § 406(a), as well as representation before the Court, *see id.* § 406(b). *Culbertson v. Berryhill*, 139 S. Ct. 517, 520 (2019) (quoting *Gisbrecht v. Barnhart*, 535 U.S. 789, 794 (2002)). Under § 406(b), the Court may award a reasonable fee to the attorney who has successfully represented the claimant in federal court, not to exceed twenty-five percent of the past-due benefits to which the social security claimant is entitled. 42 U.S.C.

§ 406(b)(1)(A); *Gisbrecht*, 535 U.S. at 792. The reasonableness analysis considers the “character of the representation and the results the representative achieved.” *Gisbrecht*, 535 U.S. at 808. An award of EAJA fees under 28 U.S.C. § 2412 offsets an award under § 406(b). *Id.* at 796.

In this case, the requested amount of attorney fees is consistent with the contingency agreement. The proposed fee equals an effective hourly rate of approximately \$367 for the total requested § 406(b) fee award. *See* ECF No. 25-2 (reflecting 52.2 attorney hours). Such an hourly rate is reasonable given the contingent nature of this case. *See, e.g., Osmun v. Comm’r of Soc. Sec.*, No. 1:16-CV-273, 2020 WL 7334271, at *3 (N.D. Ind. Dec. 14, 2020) (effective hourly rate of \$525); *Niebuhr v. Saul*, No. 18-CV-720, 2020 WL 6484488, at *1 (W.D. Wis. Nov. 4, 2020)

(effective hourly rate of \$579); *Koester v. Astrue*, 482 F. Supp. 2d 1078, 1083 (E.D. Wis. 2007) (collecting cases showing that district courts have awarded attorney fees with hourly rates ranging from \$400 to \$1,500). In addition, counsel obtained a great benefit for the Plaintiff in the past-due benefits award as well as future benefits.

CONCLUSION

For the reasons stated above, the Court GRANTS the Motion for an Award of Attorney Fees Under 42 U.S.C. § 406(b) [ECF No. 25], AWARDS an attorney fee under 42 U.S.C. § 406(b) of \$19,137, and DIRECTS that the amount of \$9,637, which already accounts for the offset of EAJA fees of \$9,500, be paid directly to counsel for the Plaintiff.

SO ORDERED on February 8, 2023.

s/ Theresa L. Springmann
JUDGE THERESA L. SPRINGMANN
UNITED STATES DISTRICT COURT